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DEC 24 1959
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No. 548

In the Supreme Court of the United States

OCTOBER TERM, 1959

FRANK HOLDER AND FRANK L. REDDEN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Vol. III, 1-9) is not yet reported.[1]

JURISDICTION

The judgment of the court of appeals was entered on October 28, 1959 (Vol. III, 10). The petition for a writ of certiorari was filed on November 27, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] The record consists of three volumes. Volume I is the transcript of testimony in the district court and contains two sections which are consecutively paginated. Volume I will be referred to as "Tr".

QUESTION PRESENTED

Whether, in a prosecution for the interstate transportation of two women for purposes of prostitution, the testimony of other prostitutes who had dealings with the defendants was properly received as bearing on the issue of intent.

STATUTES INVOLVED

18 U.S.C. 2421 provides in pertinent part:

> Whoever knowingly transports in interstate or foreign commerce * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or
>
> Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce * * * in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce * * *
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

* * * * *

STATEMENT

A three-count indictment returned in the United States District Court for the Southern District of Iowa charged petitioners with the interstate transportation of women for purposes of prostitution, in violation of the "White Slave Traffic Act" of 1910, 18 U.S.C. 2421, *supra*, and with conspiring to commit this offense, in violation of 18 U.S.C. 371 (Vol. II, 1-2). Following a jury trial, petitioners were convicted and sentenced to five years' imprisonment on each count, the sentences to run consecutively (Vol. II, 80-81). On a motion to reduce sentences, the district court suspended the sentences of each petitioner on count three and placed each petitioner on probation for five years on that count, the probationary period to commence after service of the consecutive sentences on counts one and two (Vol. II, 99-102). On appeal, the judgments were affirmed.

The evidence may be summarized as follows:

1. In late February 1957, in Des Moines, Iowa, petitioners asked Mrs. Delores Lovelady and Mrs. Jean Williams whether they would like to make a trip with them to Fort Leonard Wood, Missouri (Tr. 5-8; see Tr. 96-97).[2] Petitioner Holder had previously spoken to Mrs. Williams about having "dates for money" (Tr. 136). The women consented to the trip and were driven by the petitioners to the railroad terminal at Des Moines, where the women boarded a train for

[2] In the course of this conversation, petitioner Holder told the women that he owned a hotel in Minneapolis, Minnesota, and that the girls at his hotel made between $100 and $200 a week by bringing their dates there. He told the women that they, too, could make substantial sums if they wanted to go to Minneapolis (Tr. 10-11).

Kansas City, Missouri. Holder provided the money for Mrs. Williams' train fare. Mrs. Lovelady used her own money, but was reimbursed in Kansas City by petitioner Redden (Tr. 10, 97). Petitioners told Mrs. Lovelady that the women would travel by train because the petitioners did not want to run the risk of transporting women across a state line (Tr. 9; see Tr. 98, 132).

Petitioners, who traveled from Des Moines to Kansas City in Holder's car, met the women at a train depot in Kansas City. After spending the night in a local hotel, the women occupying a separate room,[3] the four rode in Holder's car to Lebanon, Missouri, where they secured a room for that night (Tr. 13-16). On the following day, the women were driven to the "Cactus Club", a night club located outside of Waynesville, Missouri, which was frequented by soldiers from nearby Fort Leonard Wood (Tr. 17-19, 195-196). Petitioners told the women that there was a lot of money that could be made from the soldiers, that they were to fill dates with soldiers, that they were not to charge under ten dollars and that they were not to mention that they had come from Des Moines (Tr. 18-19, 107-108). When Mrs. Williams said that she would not go through with this arrangement, Holder asked the women what they thought he had brought them "out here for" (Tr. 108). Subsequently, petitioners called for the women at the club. When informed that the women had not done "any good", Holder expressed anger.

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[3] Holder told the night clerk at this hotel that he, Holder, had two prostitutes in the hotel. He asked the night clerk to make the "arrangements" so that he, Holder, could make some money. When the clerk refused, Holder said that the women would have to be taken elsewhere (Tr. 160, 163).

(Tr. 20, 110). On the following night, before the women were returned to the "Cactus Club", Redden told Mrs. Lovelady that "[i]f you girls don't make no money you will have to do something to get back to Des Moines, because we [petitioners] don't have any money." (Tr. 21). That night and the following night, the women engaged in prostitution with soldiers and turned over their receipts to petitioners. (Tr. 22-25, 111-114). On the fourth night at the "Cactus Club", the women did not fill any dates. The women were returned to Des Moines in Holder's car and petitioners proceeded on to Minneapolis (Tr. 117).

In late March 1957,[4] petitioners transported the same women from Des Moines to Lebanon, Missouri, in Holder's car (Tr. 29-30, 118-119). Operating out of the "Cactus Club", the women engaged in prostitution and turned their receipts over to petitioners (Tr. 32-34, 119-121). After three or four nights there, petitioners returned to Des Moines with the women.

2. During its case-in-chief, the government called three prostitutes who testified that they knew petitioners and that they would sometimes bring their "dates" to the Clyde Hotel in Minneapolis. Holder and Redden worked at this hotel, which was leased to Holder (Tr. 306, 342-343). The prostitutes testified that this occurred during 1956 and 1957; that their "dates" would sign the register at the Clyde Hotel and pay the two-dollar room bill; and that either Holder or Redden would assign the couple a room, depending on which one was desk clerk at the time (Tr. 226-231,

[4] Sergeant Scott testified that payday for the soldiers at Fort Leonard Wood was on the last day of the month unless that day fell on a Sunday, in which event payday would fall on a weekday (Tr. 220).

232-235, 239, 241-243, 247-248).[5] Mrs. Jennings, the first of the prostitutes called by the government, testified that in August of 1957 she traveled with petitioners, one Harris and another prostitute in Holder's car to Fairbault, Minnesota, for purposes of engaging in prostitution with men from a nearby cannery (Tr. 229-230). She testified that she and the other woman engaged in prostitution, that she gave her receipts to Harris, and that the other woman turned over her receipts to one of the petitioners (Tr. 229-230, 236-238).[6]

The trial court overruled petitioners' objections to this line of testimony, admitting it as relevant to petitioners' knowledge and intent at the times the acts charged in the indictment were committed (Tr. 226-227, 240). In the instructions to the jury, the trial judge charged, in part (Vol. II, 69):

> In considering the conduct of the defendants before and after the alleged transportation you may

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[5] The first prostitute testified that she had brought her dates to the Clyde Hotel from July through December of 1957, and that she would occupy a room for about five minutes or less (Tr. 226, 228, 231). She also testified that she was arrested for prostitution at the Clyde Hotel in August and December of 1957 (Tr. 231). The second prostitute testified that she had brought her dates to the Clyde Hotel before Holder "owned" it, as well as when the petitioners had operated the hotel, and that she had spoken with petitioners on several occasions about finding a "trick" (Tr. 243-244). The third prostitute testified that in late 1956 and throughout 1957 she had brought some of her dates to the Clyde Hotel, and that Holder was present when she was arrested at the Clyde Hotel in April of 1957 for occupying a room with a man (Tr. 247-248).

[6] In its rebuttal, the government called a fourth prostitute who testified that in February of 1958 she lived in the Clyde Hotel, and that, in January and February of 1958 she gave some of her earnings as a prostitute to Redden (Tr. 403, 404).

consider the testimony of other witnesses in this case as to alleged misconduct by the defendants with such witnesses as bearing on the defendants' intent to commit the crimes here alleged. You may not conclude, however, that proof of such misconduct is proof of the crimes alleged here. Such evidence with reference to other alleged misconduct principally were these prostitutes who testified. Such evidence was received and may be considered by you for the limited purpose of bearing on the question of intent of the defendants to commit the crimes charged.

ARGUMENT

Petitioners contend (Pet. 3) that the testimony of the "other" prostitutes was erroneously admitted because it was "wholly immaterial and foreign to the charge in the indictment". It is well settled, however, that in prosecutions under the "White Slave Traffic Act", 18 U.S.C. 2421, *supra*, evidence of the defendant's immoral or criminal conduct, apart from that charged in the indictment, is admissible as bearing on the defendant's intent to commit the acts charged, provided the conduct is similar and reasonably connected in time. *Daigle* v. *United States*, 181 F. 2d 311, 313 (C.A. 1); *United States* v. *Pape*, 144 F. 2d 778, 780-781 (C.A. 2), certiorari denied, 323 U.S. 752; *United States* v. *Reginelli*, 133 F. 2d 595, 598 (C.A. 3), certiorari denied, 318 U.S. 783; *Lindsey* v. *United States*, 227 F. 2d 113, 116-117 (C.A. 5), certiorari denied, 350 U.S. 1008; *Wiley* v. *United States*, 257 F. 2d 900, 906-907 (C.A. 8); *Lawrence* v. *United States*, 162 F. 2d 156, 159 (C.A. 9); *Long* v. *United States*, 160 F.

2d 706, 709 (C.A. 10); *Baish* v. *United States*, 90 F. 2d 988, 990 (C.A. 10); *Tedesco* v. *United States*, 118 F. 2d 737, 740 (C.A. 9); *Neff* v. *United States*, 105 F. 2d 688, 691-692 (C.A. 8); *Brent* v. *United States*, 131 F. 2d 861 (C.A. 5); *Dunn* v. *United States*, 190 F. 2d 496, 498 (C.A. 10); *Cohen* v. *United States*, 120 F. 2d 139, 140 (C.A. 5); *Kirby* v. *United States*, 160 F. 2d 373 (C.A. 8). See *Hoke* v. *United States*, 227 U.S. 308, 325; *Williamson* v. *United States*, 207 U.S. 425, 450-451; *Ehrlich* v. *United States*, 238 F. 2d 481, 484 (C.A. 5); *Bracey* v. *United States*, 142 F. 2d 85, 88 (C.A.D.C.), certiorari denied, 322 U.S. 762; *Riddell* v. *United States*, 244 Fed. 695, 699-700 (C.A. 9), certiorari denied, 245 U.S. 668; *Deason* v. *United States*, 254 Fed. 259, 260 (C.A. 5). The testimony of the three prostitutes as to their business relationships with petitioners showed that petitioners used these prostitutes for their own monetary gain. Since petitioners' intent in transporting the women named in the indictment was an issue which required proof beyond a reasonable doubt (*Caminetti* v. *United States*, 242 U.S. 470, 485, 491; *Mortensen* v. *United States*, 322 U.S. 369, 374-375), the testimony in question was properly admitted on that issue. By appropriate instructions to the jury, it was limited to that permissible purpose.

CONCLUSION

The decision below is correct and the petition for a writ of certiorari should be denied.

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DECEMBER 1959.

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